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IN THE  
Supreme Court of the United States

OCTOBER TERM 1946

No. 89

UNITED STATES OF AMERICA,

against

*Appellant,*

NATIONAL LEAD COMPANY, TITAN COMPANY, INC.,  
E. I. DU PONT DE NEMOURS AND COMPANY,

*Appellees*

No. 90

NATIONAL LEAD COMPANY, TITAN COMPANY, INC.,

against

*Appellants,*

UNITED STATES OF AMERICA,

*Appellee*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR NATIONAL LEAD COMPANY  
AND TITAN COMPANY, INC.

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**REPLY BRIEF FOR NATIONAL LEAD  
COMPANY AND TITAN COMPANY, INC.**

The Government's brief raises no question not disposed of in our main brief. It refers, however, to National's petition requesting the District Court to pass on the reasonableness of the royalty demanded by du Pont under paragraph 7 of the judgment (Gov. brief, pp. 55, 58, 71, 101, 105). In this reply we describe the petition and the reasons for submitting it in some detail. We deal also with the arguments against reciprocal licenses, in favor of unlimited disclosure of technology; and in favor of domestic divestiture. Material errors of fact are pointed out in the Appendix.

National's petition in the District Court for determination of the reasonableness of the royalty demanded by du Pont demonstrates the need for royalty-free licensing.

The petition referred to, filed and served October 9, 1946, shows the following:

Under paragraph 7 of the judgment (R. 313), National and du Pont were compelled to arrange for uniform, reasonable licensing of their patents as between themselves on or before July 11, 1946, or run the risk of suits for infringement. (Cancellation of the National-du Pont agreement did not take effect until nine months from the date of the decree, that is, July 11, 1946 [Par. 5, R. 310-12]; cancellation of this agreement was not stayed by the order of Mr. Justice Reed.)

Accordingly, National wrote du Pont on June 4, 1946 stating its licensing policy under paragraph 7 and offering du Pont a license in accordance with this policy. National offered licenses to any applicant having no patents demanded by National at either (a) a royalty of 1% of the value of the applicant's production under the patents or (b) a single royalty payment deemed by National and the applicant to approximate the total value to the applicant of National's patents; and in the case of any applicant having patents desired by National, no royalty in exchange for a license under the applicant's patents at no royalty.

(The royalty proposed in the case of applicants having no patents was thought to meet the requirement of a uniform, reasonable royalty. National submits, however, that royalty-free licensing is essential to create a condition honestly in harmony with the law [Main brief, pp. 58-63].)

On June 14, 1946 du Pont acknowledged National's letter, stating that National's licensing policy was not satisfactory to du Pont and suggesting that a value be placed on each patent under which either party desired a license and that du Pont was willing to undertake negotiations on that basis. On June 28, 1946 a second letter was received by National from du Pont stating that du Pont requested licenses under three patents owned by National, that du Pont would use one of these patents for a period of six months only, and that the other patents would relate to but a portion "of our present pigment production". On July 8, 1946 National wrote du Pont that "In our opinion it is impossible to evaluate each patent as suggested in your letter of June 14. In the case of du Pont and other manufacturers having patents desired by our company, we think the terms and purpose of the decree can be carried out only by a royalty-free exchange; in the case of manufacturers having no patents, licenses must be granted at a royalty which will clearly permit competition." National in this letter requested a license from du Pont under all of the du Pont patents dealt with in the decree.

On July 11, 1946 du Pont wrote National that "We must again state that we consider a royalty-free exchange wholly inconsistent with the decree of October 11, in as much as such exchange would result in continuation of the very agreement which the court has ordered cancelled. We are, however, prepared to license you under patents described in paragraph 4 of the decree—as to which your letter indicates you desire licenses—at a rate of two per cent of the value of your production based upon your published carload prices for all grades of pigments manufactured under any of these patents. We feel that this rate of royalty, which is consistent with our other existing licenses is

entirely reasonable and, to use your phrase, 'will clearly permit competition'." Du Pont then offered to pay whatever reasonable royalty National determined upon for a license under the three patents requested in its letter of June 28, and closed by saying—"In as much as we are entitled to a license under the patents in question pursuant to the terms of the decree, we propose to proceed on the assumption that we are licensed under the patents and, of course will make retroactive to today's date whatever royalty is finally determined upon."

Du Pont's final letter to National dated September 13, 1946, "confirming what was indicated generally" by counsel for du Pont "at their recent conferences" with counsel for National, restated its offer of licenses under any and all of its patents at a "non-cumulative" royalty of 2% of the value of National's production of pigments manufactured under the licensed patents, such value to be based on National's published carload prices for the particular grades of pigments involved, and requested a license from National under the three patents listed in its letter of June 28, 1946, offering to pay therefor a royalty of 1% to be determined as above. Receipt of this letter was acknowledged by National September 18, 1946.

Whereupon, on October 9, 1946, National filed its petition for a determination of the reasonableness of the royalty demanded by du Pont, together with notice of motion for an order pursuant to the petition returnable October 15, 1946.

In its petition National alleged, and was prepared to prove, that if the du Pont policy should prevail National would be required to pay du Pont at least \$1,500,000 net



royalty up to January 1, 1950; that this payment might be increased to over \$11,000,000 by January 1, 1961 if National should be unable to avoid certain du Pont patents which National now uses as an integral part of its manufacturing process, and if, after prolonged and costly litigation, it should be determined that such patents are valid; that competition would not be promoted by the payment of millions of dollars by National to du Pont, in that du Pont would be placed in a dominant position in the industry, with all others, new and old alike, paying tribute, and that all other manufacturers would thus be placed at a competitive disadvantage.

National also alleged, and was prepared to prove, that during the period of the National-du Pont agreement (the cancellation of which is not now contested by National) National and du Pont adhered to the policy of privately determining which company had priority in respect of patent claims which were the subject of interference proceedings between them; that National was content to settle interference questions in this way because, even if du Pont received the patent, National received a royalty-free license under the agreement.

The motion came on for hearing before District Judge Simon H. Rifkind, who had presided at the trial, October 24, 1946. Judge Rifkind, after indicating that the court had jurisdiction, stayed the motion, "retaining it upon the calendar of this Court, until such time as the Supreme Court has decided the principal appeal", stating his reasons as follows:

" . . . I fear that such an inquiry would occupy a very considerable amount of time and would be neces-

sarily premised upon the validity in all respects of the decree now challenged in the Supreme Court. Whether that decree is too broad, as the defendants allege, or too narrow, as the government alleges, is something that I certainly have no opinion on and one which can only be disposed of by the Supreme Court.

"It may well therefore be that the work of this Court in conducting such an investigation at this time would turn out to be academic and moot and fruitless. I think consideration for the Courts' calendars and for the disposition of other business pending in this court warrants staying this matter until we know whether the decree under which this application is made is a final and valid decree."

Following a statement by counsel for National that the court had found that National and du Pont dominated and controlled the business of titanium manufacture in the United States and that they had achieved a monopoly of technical information by virtue, among other things, of a proliferation of patents, the following colloquy took place:

"The Court: No doubt about that. I will believe that forever.

"Mr. Webster: Well, your Honor has certainly found that in terms which are unmistakable.

The Court: I will go further than that. I would have liked to go along on the question of royalty-free patents but I felt that I hadn't been given the green light on that."

Judge Rifkind was acutely aware of the difficulty of determining a reasonable royalty; he indicated that it would be necessary to appoint a master to take testimony and said that he feared "such an inquiry would occupy a very considerable amount of time". (Cf. Gov. brief, pp. 63-78)



The petition is significant as indicating the use to which du Pont proposes to put its patents as a consequence of the judgment and the difficulties which will be encountered in determining and administering uniform, reasonable royalties. Cf. *United States v. Hartford-Empire Co. et al.*, 65 F. Supp. 271 (N. D. Ohio 1946).

Du Pont's attitude is expressed in its brief, pages 113-19. While the argument is there made in connection with technical information, it applies with equal force to royalty-free licensing. It is du Pont's position that because American Zirconium and Virginia Chemical (both subsidiaries of very large companies, *infra*, p. 17) were each able to achieve something less than 5% of the aggregate domestic production of  $TiO_2$  over a period of approximately 10 years (Findings 31, 32, R. 244, 245),—National and du Pont having 46.4% and 45.1% respectively of the pure  $TiO_2$  production in the United States in 1943 (Findings 3, 9, R. 236, 237),—neither of these companies has been hampered and, therefore, that anyone else could do as well without the defendants' technology, and without royalty-free licenses.

We submit that this argument is clearly and palpably fallacious (see our main brief, pp. 60-2). Royalty-free licensing (together with the cancellation of the agreements found to be illegal) is essential to "restore titanium to the system of free competition" (63 F. Supp. at 532, R. 222).

## II

**The reciprocal licensing provision should be retained.**

(Answering Plaintiff's Point II, pp. 124-7)

The Government's argument against the provision in paragraph 7 of the judgment (R. 313) requiring an applicant for a license under the defendants' patents, whether royalty-free or at a reasonable royalty, to license the defendants under the applicant's patents is founded on three propositions: (a) reciprocal licensing was not required in the *Hartford-Empire* case, 323 U. S. 386; (b) because the defendants are guilty they should be penalized; and (c) the court has no power to compel non-defendants to license their patents (Gov. brief, pp. 124-7).

We shall discuss each of these contentions.

## (a)

Reciprocal licensing was not required in the *Hartford-Empire* case for the reason stated by Judge Rifkind during the argument on the decree in this case, as follows:

" . . . At this moment I am unable to contrive an argument which has plausibility as to why it [reciprocal licensing] should not be done, and that is why I asked about the *Hartford-Empire* case, and the answer, of course, was effectively given that in that case you were dealing with a purely licensor organization which had no use for patents except for the control of licensing, and consequently there would be no benefit to it in receiving such cross-license." (R. 1274-5)

## (b)

The argument that the defendants are in a better position than non-defendants because of the illegal actions of

the defendants and therefore should be compelled to give up what they have to "restore titanium to the system of free competition (R. 222)" (Gov. brief, p. 124) was considered and rejected by the court below, as follows (R. 1272-4):

"The Court. What argument is there to be made in opposition to the proposition that if compulsory or free licensing is to be granted, that a reciprocal obligation from the beneficiary of that privilege should not be exempt [sic]?"

"Mr. Dixon. Well, I can very well visualize vehement opposition to such a proposal by even the present companies in the industry [subsidiaries of Glidden and Cyanamid] who would regard it as bringing about a difficulty with which they would be faced, or a condition imposed by the Court as a requisite to their receiving the license.

. . . . .

"The Court. I want to know why shouldn't they be exempt.

. . . . .

"The Court. . . . but assuming that the prospective beneficiaries of a free grant do not like it, is there anything by which they could justify their disaffection?"

"Mr. Dixon. As to that I am in no position to state, your Honor, I don't know.

"The Court. Well, is it a fair thing to do, or would it defeat the purposes of the statute to exact such a condition from them?"

"Mr. Dixon. I can see where that may be argued, and that was the argument made by the defendants

during the course of this trial, that the whole combination or purpose was to permit the industry—

“The Court. After all, there is nothing to prevent Webster from making a private agreement for an exchange. I mean it [reciprocal licensing] is the lesser of the greater evil.

• • • • •  
 “The Court. That is, an exchange which has a very limited relationship in comparison to making a universal exchange.

“Mr. Dixon. May I ask this question? I do not understand whether your Honor was thinking along the line of having this on a royalty-free basis.

“The Court. Assuming royalty-free, why shouldn't it be perfectly proper, assuming royalty-free, that if Virginia Chemical wanted all the National Lead patents free, that Virginia Chemical should offer National Lead an equally free license on all of its titanium patents?

“Mr. Dixon. I can see where that might have considerable merit, your Honor.

“The Court. And if it is on a stipulated control, modest royalty but compulsory, and if Virginia Chemical wants access to the du Pont patents, why shouldn't du Pont have the advantage of all the Virginia Chemical patents? Otherwise you will arrive at a situation conceivably where Virginia Chemical would simply change places with du Pont in becoming the dominating factor in the industry under this extraordinary advantage of being able to take everything for itself and keeping everything that it has.

“Mr. Dixon. Well, if I understand your Honor's question, it is directed to the granting of royalty-free licenses by the defendants?

"The Court. No. I am suggesting it on both premises.

"Mr. Dixon. I understand, or, in other words, to anyone who wants the use of these patents on a reciprocal basis." (R. 1272-4)

The reciprocal provisions of paragraph 7 should be retained whether this Court compels royalty-free licensing or affirms compulsory licensing at a uniform, reasonable royalty.

(c)

We concede that the court has no power to compel non-defendants to license their titanium patents to any applicant. The judgment requires a non-defendant applicant to license a defendant under its titanium patents only if the non-defendant desires a license under the defendant's patents. No one is compelled to request a license (R. 313).

## III

Disclosure of technical information should be limited as provided by the judgment.

(Answering Plaintiff's Point III, pp. 127-31)

The Government takes the position that the defendants should be compelled to furnish all technical information "accumulated" by them to any applicant therefor. The defendants, presumably, would be permitted to make a reasonable charge for this information (Gov. brief, p. 131).

The judgment, says the Government (brief, pp. 127-31), does not give an applicant access to the fund of technology accumulated by the defendants, in that (a) it fails to compel disclosure of information on the solution of general problems of the industry; (b) it fails to compel disclosure of information "relating to the production of products within the ambit of the restraints of the industry, as defined by the definition of 'licensed field' in the various agreements, which are neither patented nor produced by a patented process or apparatus"; (c) it fails to compel disclosure of information relating to "expired patents including the basic patents upon which the industry is based"; and (d) it fails to compel disclosure of information "relating to the practice of any patented invention which the defendants have not put into commercial use."

Paragraph 7 of the judgment provides (R. 314) that

"During a period of three years from the date of this decree such license or reciprocal license may at the option of either party contain a provision for the imparting in writing, at a reasonable charge, by the licensor to the licensee, of the methods and processes used by the former at the date of the license in its com-



mercial practice under the licensed patents in connection with the production of titanium pigments".

The District Court found (Finding 37, B. 249) that

" . . . The patents relating to titanium pigments and compounds comprise considerably more process claims than product claims. The process claims, with the exception of those of the so-called Rutiox patents which relate to the production of rutile-type titanium pigments, cover for the most part improvements in manufacturing processes originally disclosed in the Barton-Rossi, Jebsen, and Blumenfeld patents, which improvements have led to the improved present-day commercial titanium pigments. The product claims cover practically all such improved titanium pigments; thus, of 23 different grades of titanium pigments (i. e. different products) sold by NL, 21 are covered by unexpired patents. . . . "

Surely, the compulsory disclosure of "methods and processes used by . . . [the defendants in their] commercial practice under the licensed patents in connection with the production of titanium pigments" would enable any applicant to enter this industry. This is particularly true in view of the finding that substantially all present commercial products are covered by either process or product patents.

We are unable to visualize the condition which would exist under the Government's proposals. If the defendants were required to disclose information relating to the practice of patented inventions which are not used in their commercial processes, it would mean that they would be required to explain every laboratory experiment upon which a patent had been secured. It would require National to devote its technical organization to the demands of any

applicant. Any such provision would be confiscatory and go far beyond any requirement necessary to create a condition in harmony with the law.

As the Government recognizes (brief, p. 130), this Court deleted a paragraph of similar character in the *Hartford-Empire* judgment (323 U. S. at 418).

The proposal was fully discussed and considered and was disposed of at the hearings on the decree, as follows (R. 1228-9):

"Mr. Webster. . . . Now again to discuss for a moment those provisions which are intended to create a condition in harmony with the law and to shear us of the right to prevent a development of a plan, development of a condition, consistent with the law, we think the know-how provision is appropriate and we would expect to have a decree in which we would be required to give know-how necessary to put to use patents that are licensed by our company. We think the Government's suggested provision goes far beyond that; that it would require us to become a sort of nursemaid, teaching the manufacturing skills, technological skills that are not related to the use of patents that would put us into the manufacturing business and that would lead to all kinds of controversy and disorder.

"The Court. Isn't your suggestion, theoretically at least, equal to zero, because I was under the impression that a patent to be good, meaning valid, must sufficiently disclose the art so one skilled in the art could practice it without further instruction?

"Mr. Webster. Your Honor, that is a very interesting observation because we have just been discussing that very point together during the noon hour and Mr. Williamson made, at one point, substantially the same observation that your Honor has now made. We think

that theoretically a chemist as skilled as the chemist who made the invention and applied for the patent, or one perhaps who was capable of becoming as skilled as that, would be able to take a series of patents and put them into use. On the other hand, as a practical matter, the know-how that we are talking about is the know-how that would enable a concern or a group of chemists not familiar with the manufacture under patents of titanium pigments, to put the patents into operation as a group to get started in the manufacturing business under the patents, and we think that is as far as it ought to go. We think it is difficult to define exactly what that is, but we are willing to take any amount of trouble to try to do that. We think that the line between that, and as I say serving as a kind of wet nurse to the X Company's chemist or the Cyanamid Company or the Sherwin-Williams Company or the Pittsburgh Plate Glass Company or the Zinc Company for a period in perpetuity or during the life of the patents, is very impractical and very unwise and an unnecessary provision. Indeed, we think it is confiscatory so far as it requires us to devote our technical organization to the solution of the technological problems of those companies."

The District Court and counsel did take "any amount of trouble" in drafting paragraph 7 of the judgment. The defendants are compelled to disclose to any applicant the technology used by them in their commercial manufacture of titanium pigments. We are unable to see why this requirement, coupled with royalty-free licensing, will not enable any company having the other necessary facilities to enter and engage in the business.

IV

**No domestic divestiture should be granted.**

(Answering Plaintiff's Point IV, pp. 131-43)

We have answered the argument of the Government for domestic divestiture in our main brief, pages 86 to 98. The subject of prolonged discussion below, the argument made here was rejected.

It is interesting to note that counsel for the Government below stressed the alternative nature of the relief sought. Thus at R. 1221:

"Mr. Dixon. . . . I mean I do not want the Court to understand that should it feel that it would be willing to grant some form of royalty-free licensing, that it would necessarily be the position of the Government that we would also require, in addition thereto, or ask the Court for, complete divestiture under paragraph 9 of the decree. . . . So as I indicated, we are making these requests in the alternative and feel that some form of royalty-free licensing, as laid down in the Vehicular Conveyance [sic] case, may well be granted by the court, and, in the alternative, some form of divestiture, either complete or partial, and if a preference were to be requested by the court it would be the request of the Government that some form of divestiture be granted for the reasons urged in the argument this morning. . . ."

The Government has switched its preference. That this is so is indicated by the fact that in its brief 70 pages are devoted to royalty-free licensing and only 13 pages to domestic divestiture. The switch was compelled by the questions and discussion of the trial judge and by his decision (*e. g.*, R. 1198-1214, 1249, 1252-69). After prolonged argument, the court refused complete or partial divestiture, not for want of power to grant it, but as an act of discretion (R. 1286).

Like the Government in the court below, we submit that it is unnecessary to grant both royalty-free licensing and complete or partial divestiture to "restore titanium to the system of free competition" (R. 222). Royalty-free licensing is essential. We are opposed to any form of divestiture on the ground that there is no factual or legal basis even to consider it in this case.

The Government contends (brief, p. 136):

" . . . That the courts have . . . recognized that adequate competition cannot be secured in a duopoly situation, much less with a duopoly characterized by an entire history of complete absence of competition, is evidenced from the fact that in every divestiture or dissolution suit in the past, the creation of more than two competing units was required."

This statement (if it means what it seems to be intended to mean) falls apart on analysis. The fact asserted—that the domestic industry is "characterized by an entire history of complete absence of competition"—is in conflict with the facts and the findings; and the statement—"that in every divestiture or dissolution suit in the past, the creation of more than two competing units was required"—misconceives or ignores the effect of the cases referred to.

The trial court found (R. 290-1):

"78. From 1933 [the date of the National-du Pont agreement] on there was active competition between NL and DP for customers. There has been a vast increase in sales; and repeated reductions in the price of titanium pigments have taken place and a very few increases. DP entered the titanium pigment business in 1931 and since that date it has made frequent plant expansions for the manufacture of pure and composite  $TiO_2$  and its production increased from 20,027 tons in 1935 to 50,674 tons in 1941 and then decreased to 42,843 tons in 1948.



"NL and DP have endeavored to match each other's titanium products; but each also manufactures certain titanium pigments having special applications not manufactured by the other.

"There is no allocation of territory or customers between NL and DP; and each maintains a large, highly trained technical sales force engaged in endeavoring to sell titanium pigments. To a very large extent the salesmen of the two companies are chemists whose contact with consumers (that is, manufacturers of paint, rubber, glass, etc.) consists in endeavoring to demonstrate that their products merit acceptance on the basis of technical superiority. The buyers of titanium pigments are mainly well-informed, experienced purchasing agents. NL and DP sell for identical prices; there is no evidence that such price identity is the product of agreement or collusion."

The statement "that in every divestiture or dissolution suit in the past, the creation of more than two competing units was required" is documented in our main brief at pages 90 to 94. In the cases cited (Gov. brief, p. 136, footnote 46) (*Standard Oil*, *American Tobacco*, *du Pont*, and *Corn Products*) the combinations—the fusions resulting from illegal acquisitions—were illegal; the *status quo ante* (or a reasonable approximation of it) could be and was effected by dissolution (divestiture). Here there were no illegal acquisitions. As Judge RIFKIND pointed out (R. 1265-9), it would be impossible to restore the *status quo ante* because there is "no point of reference." The Government, according to Judge RIFKIND, "would create a condition which man has not yet seen, namely, the existence of four enterprises which have had no prior existence either in fact or in human contemplation" (R. 1266). For this the Government's citations are inapposite.



The Government states (brief, p. 53) that National and du Pont are giants to be destroyed in order that small companies may enter the titanium business,—at the same time stating that huge capital is necessary to enter it (*id.* at 132).

It is true that du Pont's assets are in excess of \$1,000,000,000 (Finding 9, R. 237), National's in excess of \$100,000,000 (Finding 3, R. 235). But the companies most likely to take advantage of the judgment are comparable in size and resources. Thus Glidden (owner of American Zirconium) has assets in excess of \$55,000,000; American Cyanamid (owner of Virginia Chemical) has assets in excess of \$140,000,000; Pittsburgh Plate Glass has assets in excess of \$150,000,000; and Sherwin-Williams has assets in excess of \$75,000,000. (Moody's Manual of Investments, 1946, pp. 2469, 2640, 1509, 979.) In 1945 New Jersey Zinc had an operating income (less costs, taxes, depreciation, depletion, and operating expenses) of \$6,603,571.80. (Statement to stockholders for year ending December 31, 1945; no statement of assets is available.) These companies are mentioned because their interest in this industry has been established by the record (Finding 33, R. 246; R. 1171-2).

As pointed out by the court below, it would not promote competition to transfer the titanium business of National to Pittsburgh Plate Glass or American Cyanamid (R. 1217-18).

**Conclusion**

We submit, in conclusion—

1. That paragraphs 5 and 6 of the judgment should be modified as suggested on pages 52 and 53 of our main brief to permit normal and proper business arrangements.
2. That paragraph 7 should be amended to require royalty-free licensing and in other respects affirmed.
3. That paragraph 8 should be deleted so as to permit National to retain its stock interest in the British company.
4. That the trial court's refusal, as an act of discretion, of domestic divestiture should be affirmed.

Respectfully submitted,

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## Appendix

The Government is in error in stating (a) that National and du Pont acted jointly respecting American Zirconium and Virginia Chemical, and (b) that the Barton-Rossi, Jebesen, and Blumenfeld patents represented "independent and competing lines of development".

(a)

National and du Pont acted independently respecting Zirconium and Virginia Chemical.

In spite of Findings 84 and 85 (R. 295-8) that "The evidence does not warrant the inference that the licenses granted by DP to Zirconium and the cross licensing between NL and Zirconium were made pursuant to a common plan of NL and DP or as a result of concerted action by them",—and that "There is no evidence that the action of NL and DP with respect to VC was the result of agreement between NL and DP",—the Government repeatedly refers to National and du Pont as if they were (and thus implies that they were) engaged in joint action respecting Zirconium and VC. Thus at pages 5 and 6 of its brief the Government says—

"The findings of fact (R. 234-306) state . . . that *defendants* have restricted the production of their two domestic licensees to limit their competition; . . . "

And at pages 7 and 8—

" . . . The judgment also provided that the two present licensees of *NL and DP* might within six months apply for licenses from *NL and DP* on the described basis (R. 314-315)."

Findings 84 and 85 show that VC was never a licensee of NL and that the NL-Zirconium agreement, unlike the DP

license to Zirconium, contained no production limitation. The judgment (Par. 9, R. 314-15) provides that "Either American Zirconium Corporation or Virginia Chemical Corporation, their successors or assigns, may at their option, if exercised within six months from the date of this decree, apply for licenses from DP under provisions of paragraph 7."

Similar distortions of the facts and findings appear in the Government's brief at pages 36 to 40, 50, 61, 70, 100, and 138.

(b)

**The Barton-Rossi, Jebsen, and Blumenfeld patents were complementary; they were not "independent and competing lines of development".**

The record is clear and conclusive. The findings are explicit. Barton-Rossi (the Americans) contributed composite pigments. Jebsen (the Norwegian) contributed the cheap sulphuric acid attack. Blumenfeld (the Frenchman) contributed an improved method (seeding hydrolisis) for manufacturing pure  $\text{TiO}_2$ . (See, e. g., Barton, R. 869-73; Kaegebehn, R. 910-11; Jebsen, R. 919, 929. Cf. Findings 33, 34, 37, and 70, R. 245, 247-8, 278.)

Despite the testimony, which stands unchallenged, the Government repeatedly (brief, pp. 43-50) asserts that there were three "competing lines of development" and thus implies that technical competition was stifled at the expense of the public. Nothing could be further from the truth. The relatively pure  $\text{TiO}_2$  pigments were a laboratory product—rare and expensive. Without Jebsen's sulphuric acid attack the cost of composite pigments was prohibitive. Du Pont was unable to engage in the business without the

Blumenfeld, Barton-Rossi, and Jebsen patents. The Blumenfeld patents were useful to National. The use of these complementary (not "independent and competing" patents) by National and du Pont has promoted domestic commercial competition, has resulted in a vast increase of sales and repeated reductions of price, until today titanium pigments have largely replaced the more expensive, less satisfactory white lead, lithpone, and zinc oxide pigments. (See our main brief, pp. 11-15, 40-2; Opinion, R. 187-8, 206-7.)